IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12015 OF 2025

Chaitanya Bhatt ...Petitioner

In the matter between
1. Bharati Suresh Shroff
2. Shardul Suresh Shroff
3. Pallavi Shardul Shroff
4. Cyril Suresh Shroff
5. Vandana Cyril Shroff ...Plaintiffs

Versus

1. ABB Limited, A company registered under the Companies Act, 1956 and having its registered office at Vaswani Chamber 264-265, Dr. Annie Besant Road Mumbai – 25
2. Grasim Industries Limited, having its registered office at P.O. Birlagram – 456332, Nagda, Madhya Pradesh and also having its office at Industry House Backbay Reclamation, Mumbai 400 025
3. John Fowler (India) Ltd.
4. Mahindra & Mahindra Ltd.
5. Reliance Industries Ltd.
6. NOCIL Ltd.
7. Tata Iron and Steel Co. Ltd.
8. Industrial Credit and Investment Corporation of India Ltd.
9. Tata Motors Ltd.
10. Kotak Mahindra Bank ...Respondents

Mr. Rushabh Vidyarthi, a/w Harhavardhan Khambete, for the Petitioner.
Mr. Soli Cooper, Senior Advocate, a/w Rishabh Jaisani, Harit Lakhani, i/b Shardul Amarchand Mangaldas and Co., for Respondent No.1/Original Plaintiff.
Ms. Kinjal Kakkad, i/b Vipul Shukla, for the Respondent No.5.

CORAM: N. J. JAMADAR, J.
DATED: 12th NOVEMBER, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India, the petitioner takes exception to an order dated 21st February, 2025 passed by the learned Judge, City Civil Court, Greater Bombay, whereby the Chamber Summons taken out by the petitioner to implead him as a party defendant to the suit and the consequential reliefs, came to be rejected.

3. Plaintiff Nos.1 to 5 instituted a suit against respondent Nos.1 to 10 – defendants with the assertion that late Suresh Shroff had left behind properties and assets including the shares in defendant Nos.1 to 10 companies. Kapil Thakore was entrusted by the plaintiffs with those securities for transferring specified securities in the names of the particular plaintiffs. The plaintiffs had executed necessary transfer documents. The said Kapil Thakore fraudulently converted and sold those securities, enlisted in Exhibits-B1 to B10 to the plaint, on the stock-exchanges through brokers/intermediaries. Hence, the suit to direct the defendant companies to deliver to the plaintiffs

duplicate certificates in respect of the securities set out in Exhibits-B1 to B10 and to deliver the plaintiffs the scrips in respect of the securities set out in Exhibits-B1 to B10.

4. In the said suit, the plaintiffs prayed for interim reliefs. By orders dated 19th March, 1998 and 27th November, 1998, the defendants were restrained from giving effect to the transfers of the shares as set out in Exhibits-B1 to B10.

5. The petitioner claimed to have *bona fide* purchased 100 shares of Kotak Mahindra Finance Limited (D10), bearing Share Certificate No.208243 from Mr. Hasmukh and Anjna Raichura. Those 100 shares originally stood in the name of late Suresh Shroff and his wife and, subsequently, changed hands twice before being *bona fide* purchased by the petitioner on 2nd November, 1998.

6. It is the claim of the petitioner that the petitioner had requested the Registrar and Transfer Agent of defendant No.10, namely, Karvy Consultants, to de-materialize the shares in the name of the petitioner. However, the RTA declined citing injunction order passed by this Court. The petitioner also lodged complaint with the SEBI but to no avail. The petitioner has eventually filed a petition being WP/14318/2020 before the High Court of Madhya Pradesh. In the said petition, a copy of the plaint, in the instant suit, was furnished to the petitioner. Hence, the petitioner took out the Chamber Summons seeking his impleadment as he has vital interest in the subject matter of the suit. The petitioner claims, in his absence, no effective decree can be passed in the suit as the Share Certificate stands in the name of the petitioner.

7. Both the plaintiff and defendant No.10 resisted the petitioner's prayer for impleadment in the suit. Though the petitioner had claimed substantive reliefs in the Chamber Summons, the petitioner restricted the Chamber Summons to his impleadment as a party defendant to the suit, only.

8. By the impugned order, the learned Judge, City Civil Court, was persuaded to reject the Chamber Summons observing *inter alia* that there was an inordinate and unexplained delay on the part of the petitioner in seeking impleadment as the petitioner became aware in the year 2010 itself that, an interim order of restraint on transfer of the subject shares was passed by the High Court. Secondly, the petitioner was neither a necessary nor a proper party to the suit as it was instituted seeking a direction to the companies, the shares of which were allegedly fraudulently transferred, to issue duplicate certificates and deliver the scrips. The impleadment of the petitioner would unduly expand the scope of the suit.

9. Being aggrieved, the petitioner has invoked the writ jurisdiction.

10. I have heard Mr. Rushabh Vidyarthi, the learned Counsel for the petitioner, and Mr. Soli Cooper, the learned Senior Advocate for respondent No.1, at some length. With the assistance of the learned Counsel for the parties, I have perused the pleadings and the material on record.

11. Mr. Vidyarthi, the learned Counsel for the petitioner, submitted that the petitioner purchased the subject shares *bona fide* before this Court had passed an interim order on 27th November, 1998 qua the shares enlisted in Exhibit-B10, inclusive of the subject shares. The share certificate has been issued in the name of the petitioner. Thus, in view of the provisions contained in Section 84 of the Companies Act, 1956, the petitioner has *prima facie* title to the subject shares. In this backdrop, it cannot be urged that the petitioner has no interest in the subject matter of the suit. Taking the Court through the initial stand of Kotak Mahindra (D10) that the suit was bad for non-joinder of necessary parties as many *bona fide* purchasers would have purchased the shares from the stock market without notice, Mr. Vidyarthi urged that defendant No.10 company, however, took a dramatically opposite stand when the petitioner sought his impleadment. A prayer for issue of duplicate share certificate, according to Mr. Vidyarthi, cannot be granted in the absence of the persons, who hold the share certificate.

12. At any rate, Mr. Vidyarthi would urge, the petitioner is a proper party. Since the petitioner is affected by the restraint against transfer, the presence of the petitioner before the Court is essential for an effectual and complete determination of the suit. The learned Judge, City Civil Court, was unduly swayed by the alleged delay in seeking the impleadment of the petitioner. It was submitted that the petitioner had satisfactorily accounted for the delay by explaining the actions taken by the petitioner over a period of time.

13. To lend support to these submissions, Mr. Vidyarthi placed reliance on the judgments of the Supreme Court in the cases of ***M/s. J. N. Real Estate vs. Shailendra Pradhan and ors.***[1]***, Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and others***[2] and

1 2025 INSC 611.

2 (2010) 7 SCC 417.

Sumtibai and others vs. Paras Finance Co. Regd. Partnership Firm*[3]*.

14. As against this, Mr. Cooper the learned Senior Advocate for respondent No.1, submitted that the prayers in the suit are specific and limited qua the defendant companies of which the deceased and his wife were holding the securities, which have been fraudulently converted and transferred. The prayer for restraint on transfer was an interim prayer. Therefore, the submission on behalf of the petitioner that on account of the restraint on transfer, the petitioner becomes a necessary party to the suit, cannot be accepted.

15. Laying emphasis on the conduct of the petitioner in not seeking the impleadment despite being aware of the restraint on the transfer of the shares in the year 2010, Mr. Cooper would urge that the prayer of impleadment of the petitioner, at this stage, was rightly repelled by the learned Judge. On one hand, by his conduct, the petitioner indicated that he would abide by the outcome of the said suit. On the other hand, the petitioner has filed a writ petition before the Madhya Pradesh High Court and during the pendency of the said petition, the instant application for impleadment came to be filed. A delay of over 14

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3 (2007) 10 Supreme Court Cases 82.

years in seeking the impleadment cannot be said to be inconsequential.

16. Lastly, Mr. Cooper would urge, the impleadment of the petitioner as a party defendant to the suit would alter the very character of the suit and the scope of adjudication infinitely. Taking the Court through the issues framed by the learned Judge, Mr. Cooper would urge that, the prime question that warrants adjudication before the City Civil Court is, whether the securities were fraudulently converted and sold and, consequently, whether the companies are liable to issue duplicate share certificates to the plaintiffs. The impleadment of the parties like the petitioner would expand the scope of adjudication. Therefore, the learned Judge was justified in rejecting the application. Reliance was placed by Mr. Cooper on a judgment of the Supreme Court in the case of ***Sumtibai and others*** (supra).

17. I have given anxious consideration to the submissions canvassed across the bar. The matter of addition or deletion of a party to the suit is not one of the initial jurisdiction but that of judicial discretion. Like in other matters, where such discretion is required to be exercised, the discretion to add or delete a party to the suit is required to be exercised keeping in view the object of the enabling provision. If the Court finds that a party is a necessary party, then the impleadment of such a party becomes imperative, lest, the court cannot pass any effective decree. In a case where the impleadment of a party is sought as a proper party, then the Court has to pose unto itself a question, as to whether the presence of such person is warranted for an effectual and complete adjudication of the dispute, though such person is not a necessary party.

18. The distinction between a necessary and a proper party is well marked. In the case of ***Kasturi vs. Iyyamperumal***[4]***,*** a three-Judge Bench of the Supreme Court enunciated that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings, and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief was claimed against such person.

19. In the case of ***Mumbai International Airport*** (supra), on which reliance was placed by Mr. Vidyarthi, the Supreme Court

4 (2005) 6 SCC 733.

expounded the distinction between necessary party and proper party, as under:

> "15. A "necessary party" is a person who ought to have been joined as a party and in whose absence not effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matter in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

20. With the aforesaid preface, reverting to the facts of the case, it becomes abundantly clear that the plain case of the plaintiffs is that the securities belonging to Suresh Shroff and his wife were entrusted to Mr. Thakore for transferring those securities in the name of respective plaintiffs. Mr. Thakore fraudulently converted and sold those securities on the floor of the stock exchanges. Therefore, having realized the fraud, the plaintiffs instituted the suit seeking a direction for issue of duplicate share certificates in respect of the securities set out in Exhibits-B1 to B10. Indeed, the plaintiffs sought an interim relief to restrain the defendant companies from transferring the securities set out in Exhibits-B1 to B10. However, the interim relief does not materially alter the nature of the suit.

21. It would be contextually relevant to note that the petitioner claims to have *bona fide* purchased the subject shares after those shares had changed hands. Incontrovertibly, there would be a number of persons, who might have purchased the shares in respect of which the suit has been instituted, unmindful of the alleged fraudulent transfer by Mr. Thakore. The remedy of such persons would be to proceed against their vendors, in the event it turns out that the vendors had no title which they could have conveyed to such purchasers. Therefore, in a suit seeking issue of duplicate share certificates, the end purchasers like the petitioner may not be necessary parties.

22. It is in the aforesaid backdrop, a submission was forcibly canvassed by Mr. Vidyarthi that the petitioner is, at any rate, a proper party. In the case of ***Mumbai International Airport*** (supra), the Supreme Court expounded the considerations which ought to weigh with the Court in exercising the discretion. The observations in paragraphs 24.4 and 25 are material and, hence, extracted below:

> "24.4 If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, *bona fides*, etc., the court will normally implead him, if he is found to be a proper party. <u>On the other hand, if a non-party makes an application seeking impleadment as a proper party and the court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of</u>

> action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if *D* claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of P representing that he is the co-owner with half-share, and P files a suit for specific performance of the said agreement of sale in respect of the undivided half-share, the court may permit the other co-owner who contends that *D* has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the defendant vendor to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject-matter of the suit for specific performance, and that it will decide in the suit only the issues elating to specific performance, that is, whether the defendant executed the agreement/contract and whether such contract should be specifically enforced.
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> 25. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right lo insist that he should be impleaded as a partly, merely because he is i proper party."
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> (emphasis supplied)

23. The Supreme Court has, in terms, observed that if a person seeks impleadment as a proper party and the Court finds that the addition will alter the nature of the suit and introduce a new cause of action, it may dismiss the application even if he is found to be a proper party where the Court does not want to widen the scope of the suit.

24. It is true the aforesaid observations were made in the context of a suit for specific performance of the contract.

However, the principle may govern the other suits also. Evidently, there is no privity between the plaintiffs and the petitioner. The two rival claims in respect of the subject shares operate in different spheres. The plaintiffs claim, the defendant companies are liable to issue duplicate share certificates as the original share certificates were entrusted to Mr. Thakore, and the latter, abused the custody of the original share certificates and transfer documents. In contrast, the petitioner claimed to have acquired ownership over the subject shares having purchased the same in the open market.

25. In such a situation, the impleadment of the petitioner as a proper party would surely expand the scope of the suit. It would lead to two distinct inquiries in one suit. One, whether the plaintiffs prove that they are entitled to duplicate certificates on account of the fraudulent conversion and transfer. Second, whether the petitioner or for that matter his predecessor-in-title, purchased the subject shares *bona fide* without notice of the alleged fraudulent transfer. Such a course would definitely alter the nature of the suit and, substantially, widen the scope of the suit. Even if the case of the petitioner that he is a *bona fide* purchaser for value without notice is taken at par, then also the petitioner would have his remedies against his vendors.

26. As noted above, the exercise of power under Order I Rule 10(2) is in the discretion of the Court. In the case at hand, there is material to indicate that the petitioner became aware of the restraint on transfer in the year 2010, itself. The petitioner did not seek impleadment. The aspect of delay in seeking the impleadment is required to be appreciated from the point of view of the discretion to be exercised by the Court apart from the fact that the remedies of the petitioner may have been barred by the lapse of time. The inaction on the part of the petitioner, for almost 14 years, therefore, cannot be said to be inconsequential. In the intervening period, as noted above, the petitioner has instituted a writ petition before the Madhya Pradesh High Court.

27. In this view of the matter, the exercise of discretion by the learned Judge not to implead the petitioner as a party defendant appears to be justifiable. If the remedies are still available, the petitioner may avail those remedies against the vendor of the petitioner.

28. For the foregoing reasons, this Court does not find any substantial reason to interfere with the impugned order. Resultantly, the petition deserves to be dismissed.

29. Hence, the following order:

: O R D E R :

(i) The petition stands dismissed.

(ii) Rule discharged.

No costs.

[N. J. JAMADAR, J.]